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**THE LAW OF ARMED CONFLICT AND
PEACEKEEPING (376S)**

**James M. Cooper
Faculty of Law
University of Toronto**

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FACULTY OF LAW
UNIVERSITY OF TORONTO

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The Law of Armed Conflict and Peacekeeping (376S)

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Wednesdays
6 - 8 p.m.
Falconer House
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Seminar Outline

I. The Right to Use Force

1. Themes in the Law of Armed Conflict and Peacekeeping

- (a) Law vs. Politics: Critical Legal Studies Approach to International Law
- (b) Justice vs. Order: The Charter of the United Nations
- (c) Globalism vs. Statehood: The Evolving Nature of Sovereignty in the MTV Age
- (d) The Dangers of Meta-Narratives: The Just War Theory and The New World Order

Casebook Reading:

Covenant of the League of Nations (Excerpts)

Charter of the United Nations (Excerpts)

James M. Cooper, "Justice continues to be trumped by the concern for world order", Globe and Mail, July 2, 1993, A14.

Martti Koskenniemi, "The Politics of International Law", 1 European Journal of International Law 4 (1990).

Phillip Allott, Eunomia: New Order for a New World (Oxford: Oxford University Press, 1990), ch. 1.

"The U.N.: World Parliament of Peace"; address by U.S. President Bush before the United Nations General Assembly, October 1, 1990.

Boutros Boutros Ghali, An Agenda for Peace (U.N. Doc. A/47/277-S/24111, 17 June 1992) (Excerpts).

Boutros Boutros Ghali, Supplement to An Agenda for Peace (U.N. Doc. A/50/60-S/1995/1, 3 January 1995) (Excerpts).

Other Reading:

Gray L. Dorsey "The McDougal-Lasswell Proposal to Build a World Public Order", 82 American Journal of International Law 41 (1988).

Myres S. McDougal, "The Dorsey Comment: A Modest Retrogression", 82 American Journal of International Law 51 (1988).

2. The History of the Use of Force: From Just War Theory to Art. 2(4) of the U.N. Charter

- (a) Just War Theory and the Rise of the Modern State System
- (b) The Inter-War Period: The Covenant of the League of Nations, The Pact of Paris 1928, and The Nuremberg Tribunal
- (c) Shaking the Tree: The Charter of the United Nations, Its Travaux Preparatoires, and The Preamble
- (d) The Three Pillars of the Post-War International System
- (e) The Remaining Pillar: Article 2(4) and Its Meaning
- (f) In Through the Out Door: The Nicaragua v. U.S.A. Case and Jus Cogens
- (g) The Corollary: Article 2(7) and State Sovereignty

Casebook Reading:

Judgment of the Trial of the Major War Criminals before the International Military Tribunal of 1946, vol. XXII, IMT Secretariat (Excerpts), 1948, pp. 413-414 and 497.

Yoram Dinstein, War, Aggression, and Self-Defence (Cambridge: Grotius Publications Ltd., 1988), pp. 81-111.

Oscar Schachter, "The Right of States to Use Armed Force", 82 Michigan Law Review 1620 (1984).

Case Concerning Military and Paramilitary Activities in and around Nicaragua, I.C.J. Reports 1986 at 1 (Excerpts and accompanying notes from D.J. Harris, Case and Materials on International Law (4th ed.) (London: Sweet & Maxwell, 1991).

Other Reading:

Oscar Schachter, International Law in Theory and Practice (London: Martinus Nijhoff Publishers, 1992), ch. VII.

Belatchew Asrat, Prohibition of Force Under the UN Charter - A Study of Art. 2(4) (Uppsala, Sweden: Iustus Forlag, 1991).

3. The Exception to Article 2(4): Article 51/Self-Defence

- (a) Is the Right of Self-Defence "Inherent"? - Customary International Law and The Act of Chapultepec Afterthought
- (b) "Aggression Armee": Linguistic Concerns
- (c) The Requirement of Reporting to the Security Council: Directory or Mandatory?
- (d) The "Until" Clause: When is the Right of Self-Defence Extinguished?
- (e) Anticipatory Self-Defence: Israel and the Third Temple Argument
- (f) The Confusion over Reprisals: A Reappraisal of Self-Defence

Casebook Reading:

Charter of the United Nations, Article 51 (English and French)

Resolution on the Definition of Aggression 1974, General Assembly Resolution 3314 (XXIX), December 14, 1974.

The Caroline Case, 29 British and Foreign State Papers 1137-1138 (and accompanying notes from Harris, Case and Materials on International Law supra.

The Falkland Islands War, U.N. Doc. S/PV.2346, p. 7.

The Anglo-French Invasion of Suez, Hansard, H.L., Vol. 199, cols. 1348-1359, November 1, 1956.

Derek W. Bowett, "Reprisals Involving Recourse to Armed Force", 66 American Journal of International Law 1 (1972).

Anthony D'Amato, "Israel's Air Strike upon the Iraqi Nuclear Reactor", 77 American Journal of International Law 584 (1983).

Other Reading:

Louis Rene Beres, "Preserving the Third Temple: Israel's Right of Anticipatory Self-Defense Under International Law", 26 Vanderbilt Journal of Transnational Law 111 (1993).

Christopher Greenwood, "International Law and the United States' Air Operation against Libya", 89 West Virginia Law Review 933 (1987).

D.W. Greig, "Self-Defence and the Security Council: What does Article 51 Require?", 40 International and Comparative Law Quarterly 366 (1991).

Frits Kalshoven, Belligerent Reprisals (Leiden: A.W. Sijthoff, 1971).

4. The Protection of Nationals Abroad

- (a) Part of Self-Defence or a Customary Right?
- (b) The Entebbe Incident: Israel's Special Role?
- (c) The French in Africa: Protection or Imperialism by another name?

Casebook Reading:

The Entebbe Incident, U.N. Doc.S/PV.1939, and accompanying notes from Harris, Cases and Materials on International Law, supra.

Derek W. Bowett, "The Use of Force for the Protection of Nationals Abroad", chapter 3 in Antonio Cassese, editor, The Current Legal Regulation of the Use of Force (Oxford: Clarendon Press, 1986).

Other Reading:

Derek W. Bowett, Self-Defence in International Law (Manchester: Manchester University Press, 1958), ch 5.

Natalino Ronzitti, Rescuing Nationals Abroad Through Military Coercion and Intervention on Grounds of Humanity (Dordrecht: Martinus Nijhoff Publishers, 1985).

5. Intervention by Consent of Incumbent Government

- (a) The Doctrine of State Sovereignty and the International System: From Jean Bodin to Saddam Hussein
- (b) Article 2(7) and the Duty of Non-Intervention
- (c) The Rule Regarding Civil Wars
- (d) The Scope for Abuse: Hungary 1956, Czechoslovakia 1969, Afghanistan 1979, Grenada 1983, Panama 1989, Kuwait 1990

Casebook Reading:

The Declaration on the Inadmissability of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty 1965, General Assembly Resolution 2131 (XX), December 21, 1965, G.A.O.R., 20th Sess. Supp. 14, p. 11 and accompanying notes from Harris, Cases and Materials on International Law, supra.

General Assembly Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations 1970, General Assembly Resolution 2625 (XXV), October 24, 1970.

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W. Michael Reisman, "Sovereignty and Human Rights in Contemporary International Law", 84 *American Journal of International Law* 866 (1990).

Phillip Allott, Eunomia: New Order for a New World (Oxford: Oxford University Press, 1990), pp. 274 - 279.

Other Reading:

F.X. De Lima, Intervention in International Law (Der Haag: Uitgeverij Pax Nederland, 1971).

J.L. Brierly, The Law of Nations (Oxford: Clarendon Press, 1963).

A.J. Thomas and A.V.W. Thomas, Non-Intervention (Dallas: Southern Methodist University Press, 1956).

Ellery C. Stowell, Intervention in International Law (Washington, D.C.: John Byrne & Co., 1921).

6. The Use of Force in the Pursuit of Self-Determination

- (a) Self-Determination: Just War Theory Revisited
- (b) Historical Antecedents: V.I. Lenin to Woodrow Wilson
- (c) Sucking and Blowing: U.N. General Assembly Resolutions
- (d) Case Studies: The P.L.O., S.W.A.P.O., P.O.L.I.S.A.R.I.O.
- (e) The Danger to Sovereignty and the Downward Spiral

Casebook Reading:

Antonio Cassese, International Law in a Divided World (Oxford: Clarendon Press, 1986), pp. 90-99, 131-137.

Natalino Ronzitti, "Resort to Force in Wars of National Liberation", in Antonio Cassese (ed.), Current Problems of International Law (Milano: Dott. A. Giuffrè Editore, 1975), pp. 319-353.

W. Michael Reisman, "Coercion and Self-Determination: Construing Charter Article 2(4)", 78 *American Journal of International Law* 642 (1984).

Intervention to Restore Democratic Principles

- (a) The Confusion with Intervention by Consent of Incumbent Government and Intervention for Self-Determination
- (b) Moral Relativism and the Floating Definition of Democracy
- (c) The Scope for Abuse: The Breznev and Reagan Doctrines
- (d) The Pan-Islamic Card

Casebook Reading:

Oscar Schachter, "The Legality of Pro-Democratic Invasion", 78 *American Journal of International Law* 645 (1984).

John Norton Moore, "Grenada and the International Double Standard", 78 *American Journal of International Law* 145 (1984).

Richard Falk, "The Haiti Intervention: A Dangerous World Order Precedent for the United Nations", 36 *Harvard International Law Journal* No. 2 (Spring 1995) 341.

Other Reading:

Ved P. Nanda, "The Validity of United States Intervention in Panama under International Law", 84 *American Journal of International Law* 494 (1990).

Tom J. Farer, "Panama: Beyond the Charter Paradigm", 84 *American Journal of International Law* 503 (1990).

Anthony D'Amato, "The Invasion of Panama was a Lawful Response to Tyranny", 84 *American Journal of International Law* 516 (1990).

William C. Gilmore, The Grenada Intervention (New York: Facts on File Inc., 1984).

Scott Davidson, Grenada (Brookfield: Avebury, 1987), pp. 79-137.

7. Humanitarian Intervention

- (a) Imperial History: A Customary Right in Pre-Charter Era?
- (b) The U.N. Charter: An Organic Reading (Reisman, Lillich)
- (c) The Old School Literalists: Brownlie's Argument
- (d) The Case Studies: Bangladesh 1971, Uganda 1978, Cambodia 1978
- (e) Kick Starting a New Doctrine: Operation Provide Comfort in Northern Iraq (April 1991)
- (f) The Good, the Bad and the Ugly: Operation Restore Hope in Somalia (December 1992)
- (g) Is Humanitarian Intervention Legal in Custom? A Lesson for the Balkans

Casebook Reading:

Myres S. McDougal and W. Michael Reisman, "Response", 3 *International Lawyer* 438 (1968).

Jean-Pierre L. Fonteyne, "The Customary International Law Doctrine of Humanitarian Intervention: Its Current Validity under the U.N. Charter", 4 *California Western International Law Journal* 201 (1974).

Michael Akehurst, "Humanitarian Intervention", in Hedley Bull (ed.), Intervention in World Politics (Oxford: Clarendon Press, 1984), pp. 95-118.

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Christopher Greenwood, "Is There a Right of Humanitarian Intervention?" The World Today (February 1993), p. 34.

United Nations Security Council Resolution 733, January 23, 1992.

United Nations Security Council Resolution 775, August 28, 1992.

United Nations Security Council Resolution 794, December 3, 1992.

United Nations Security Council Resolution 713, September 25, 1991.

United Nations Security Council Resolution 787, November 16, 1992.

Amnesty International Report 1995, section on Iraq, pp. 166-169.

Other Reading:

Michael J. Bazyler, "Reexamining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia", 23 *Stanford Journal of International Law* 547 (1987).

Thomas M. Frank and Nigel S. Rodley, "After Bangladesh: The Law of Humanitarian Intervention by Military Force", 67 *American Journal of International Law* 275 (1973).

Peter Malanczuk, Humanitarian Intervention and the Legitimacy of the Use of Force (Amsterdam: Het Spinhuis, 1993).

Fernando R. Teson, Humanitarian Intervention: An Inquiry into Law and Morality (Dobbs Ferry, New York: Transnational Publishers Inc., 1988).

II. Collective Security and Peacekeeping

8. The Design of the U.N. System

- (a) Antecedents to the U.N. System: The League of Nations
- (b) The Role of the Military Staff Committee
- (c) Enforcement/Authorized Self-Defence
- (d) The Uniting for Peace Resolution
- (e) The Korean Conflict
- (f) The Southern Rhodesia Question
- (g) Economic Sanctions against South Africa
- (h) Precursor: Collective Security vs. Common Security

Casebook Reading:

United Nations Security Council Resolutions of June 25 and 27, July 7, 1950 and accompanying notes from Harris, Cases and Materials on International Law, supra.

United Nations Security Council Debate of April 9, 1966

United Nations Security Council Resolution 221 (1966) and accompanying notes from Harris, Cases and Materials on International Law, supra.

Uniting for Peace Resolution, General Assembly. Resolution 377 (V), November 3, 1950.

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The Commission on Global Governance, Our Global Neighborhood (New York: Oxford University Press, 1995) pp. 78 -82.

James E. Rossman, "Article 43: Arming the United Nations Security Council", 27 New York University Journal of International Law and Politics 227 (1994).

9. The Kuwait Crisis and Operation Desert Shield/Storm

- (a) The Role of International Lawyers
- (b) Article 42 1/2: Did Resolution 678 Authorize Self-Defence or Collective Enforcement?
- (c) The Rebirth of the Security Council or Chapter VII of the UN Charter as a Stillborn
- (d) The New World Order: "Same as It Ever Was"

Casebook Reading:

United Nations Security Council Resolution 660, August 2, 1990 and accompanying notes from Harris, Cases and Materials on International Law, supra.

United Nations Security Council Resolution 661, August 6, 1990 and notes.

United Nations Security Council Resolution 665, August 25, 1990 and notes.

United Nations Security Council Resolution 678, November 28, 1990 and notes.

John R. MacArthur, Second Front - Censorship and Propaganda in the Gulf War (Los Angeles: University of California Press, 1992), excerpts from Chapter Two "Selling Babies".

"Toward a New World Order"; address by U.S. President Bush before a Joint Session of the U.S. Congress, September 11, 1990.

Shaw J. Dallal, "International Law and the United Nations' Role in the Gulf Crisis", 18 *Syracuse Journal of International Law and Commerce* 111 (1992).

Christopher Greenwood "New World Order or Old? The Invasion of Kuwait and the Rule of Law", 55 *Modern Law Review* 153 (1992).

Rosalyn Higgins, Problems & Process: International Law and How We Use It (Oxford: Clarendon Press, 1994) ch. 15.

10. Peacekeeping and Regional Security

- (a) An Agenda for Peace(keeping): A Metaphor for the United Nations
- (b) U.N. efforts: UNEF, ONUC, UNICYP, UNIFIL
- (c) Regional efforts: OAS, OAU, ECOWAS, Arab League, EC?
- (d) The Grey Area between Peacekeeping and Enforcement Action
- (e) The Future of Peacekeeping: NATO, G7, Dream Team

Casebook Reading:

Charles Krauthammer, "Peacekeeping is for Chumps," Saturday Night, November 1995, pp. 72 - 76.

Certain Expenses of the United Nations, I.C.J. Reports 1962, at 151.

F.T. Liu, United Nations Peacekeeping and the Non-Use of Force - Occasional Paper Series, International Peace Academy (Boulder: Lyn Rienner Publishers, 1992), pp. 11 - 43.

G.J. Naldi, "Peacekeeping Attempts by the Organization of African Unity", 34 *International and Comparative Law Quarterly* 593 (1985).

Nikolai B. Krylov, "International Peacekeeping and Enforcement Action After the Cold War", in Lori Fisler Damrosch and David J. Scheffer (eds.), Law and Force in the New International Order (Oxford: Westview Press, 1991), pp. 94-100.

Boutros Boutros Ghali, Building Peace and Development 1994. Annual Report on the Work of the Organization. (New York: United Nations Publication, 1994), paras. 417 - 435.

Jon E. Fink, "From Peacekeeping to Peace Enforcement: The Blurring of the Mandate for the Use of Force in Maintaining International Peace and Security", 19 *Maryland Journal of International Law and Trade*, Vol. 19, (1995) 1.

Other Reading:

Georges Abi-Saab, The United Nations Operation in the Congo 1960-1964 (Oxford: Oxford University Press, 1978).

Alan James Peacekeeping in International Politics (New York: St. Martin's Press, 1990).

Hilaire McCoubrey and Nigel D. White, International Law and Armed Conflict (Brookfield: Dartmouth, 1992), ch. 11.

III. The Laws of Armed Conflict

11. Ius In Bello: Why Humanitarian Law?

- (a) The Relationship between the Prohibition of Aggressive War and the Law Regulating Hostilities
- (b) Sources: Treaties and Custom
- (c) State Practice
- (d) Definition of Armed Conflict

Casebook Reading:

The Peleus Trial 13 AD 248; 1 WCR 1.

Bert V.A. Roling, "Aspects of the Criminal Responsibility for Violations of the Laws of War", in Antonio Cassese (ed.), The New Humanitarian Law of Armed Conflict (Napoli: Editoriale Scientifica, 1971), pp. 199-231.

Christiane Bourloyannis, "The Security Council of the United Nations and the Implementation of International Humanitarian Law", 20 *Denver Journal of International Law and Policy* 335 (1992).

Other Reading:

U.S.A. v. List (the "Hostages case") 15 AD 632; 8 WCR 34.

U.S.A. v. Von Leeb (the "High Command case") 15 AD 376; 12 WCR 1.

L.C. Green, "International Crimes and the Legal Process", 29 *International and Comparative Law Quarterly* 567 (1980).

Theodor Meron, "Towards a Humanitarian Declaration of Internal Strife", 78 *American Journal of International Law* 859 (1984).

Combatant Status

- (a) "Uniform Application"?: All Forces
- (b) Regular Armed Forces
- (c) Irregulars: Guerrilla Warfare from Che Guevara to Carlos Marighella
- (d) The Importance of Protocol I, 1977

Casebook Reading:

The Brownlie-Draper Exchange, The Times (UK), June-July 1982.

1907 Hague Convention IV and Regulations, Annex to the Convention: Regulations Respecting the Law and Customs of War on Land (Excerpts)

Geneva Prisoners of War Convention, 1949 (Excerpts)

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Public Prosecutor v. Oie Hee Koi [1968] 1 All ER 419.

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Claude Pilloud, "Protection of the Victims of Armed Conflicts - Prisoners of War", in UNESCO, International Dimensions of Humanitarian Law (Dordrecht: Martinus Nijhoff Publishers, 1988).

12. Civilians and the Law of Belligerent Occupation

- (a) Lessons from World War Two
- (b) The Importance of Custom: The Hague Regulations on Land Warfare Annexed to the Convention IV of 1907; Articles 42 to 56
- (c) The Response of Treaty: The 1949 Geneva Convention IV; Part III
- (d) The Occupied Territories under Israeli Military Governance

Casebook Reading:

Annex to the Convention Regulations Respecting the Laws and Customs of War on Land, (1907 Hague Rules) (Excerpts).

Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (1949) (Excerpts).

Adam Roberts, "What is a Military Occupation?", 55 British Yearbook of International Law 248 (1984).

Oji Umzurike, "Protection of the Victims of Armed Conflicts - Civilian Population", in UNESCO, International Dimensions of Humanitarian Law, supra.

Other Reading:

Soubrouillard v. Kilbourg 15 AD 551.

Olive Oil Case 15 AD 563.

Singapore Oil Stocks Case 23 ILR 810.

Haw Pia v. China Banking Corp. 18 ILR 642.

Yoram Dinstein, "The Law of Belligerent Occupation", 8 Israel Yearbook of Human Rights 104 (1978).

Evan J. Wallach, "The Use of Crude Oil by an Occupying Belligerent State as a Munition de Guerre," 41 International and Comparative Law Quarterly 287 (1992).

13. Methods and Means of Warfare

- (a) Back on the Block: Conventional Weapons
- (b) Glowing Reception: Nuclear Weapons
- (c) Chemical and Biological Warfare
- (d) Dig the New Breed: Laser Weapons
- (e) The Economics of Landmines

Casebook Reading:

International Committee of the Red Cross, Conference of Government Experts on the Use of Certain Conventional Weapons Report (Lucerne, 1974) (Excerpt).

"Documents on the Israeli destruction of Iraq's nuclear reactor" 20 ILM 963 (1981).

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Kenneth Anderson and Monica Schurtman, "The United Nations Response to the Crisis of Landmines in the Developing World", 36 Harvard International Law Journal No. 2 (Spring 1995) 359.

Other Reading:

Shimoda case 32 ILR 626.

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Frits Kalshoven, The Law of Warfare (Leiden: A.W. Sijthoff, 1973), ch. IV.

Stockholm International Peace Research Institute, The Law of War and Dubious Weapons (Stockholm: Almqvist & Wiksell, 1976).

Nagendra Singh and Edward McWhinney, Nuclear Weapons and Contemporary International Law (2nd ed.) (Dordrecht: Martinus Nijhoff Publishers, 1991), Part Four.

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- Antonio Cassese, *International Law in a Divided World* (Oxford: Clarendon Press, 1986), pp. 90-99, 131-137. 196
- Natalino Ronzitti, "Resort to Force in Wars of National Liberation", in Antonio Cassese (ed.), *Current Problems of International Law* (Milano: Dott. A. Giuffrè Editore, 1975), pp. 319-353. 205
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